

BAKER LESHKO SALINE & BLOSSER, LLP
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White Plains, New York 10601-1712
914.681.9500

'10 CIV 02481

JUDGE SEBEL

FILED
U.S. DISTRICT COURT
2010 Mar 19 PM 2:47
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>CHESLEY McLAREN,</p> <p>Plaintiff,</p> <p>-against-</p> <p>CHICO'S FAS, INC.,</p> <p>Defendant.</p>	<p>Civ. ()</p> <p><u>COMPLAINT</u></p> <p>PLAINTIFF DEMANDS A JURY TRIAL</p>
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Chesley McLaren, by her attorneys, Baker Leshko Saline & Blosser, LLP,
complaining of the above-mentioned defendant alleges as follows:

The Parties

1. Plaintiff is a citizen and resident of the State of New York.
2. Defendant Chico's FAS, Inc. is a corporation organized under and existing pursuant to the laws of the State of Delaware and has a principal place of business in the State of Florida (hereinafter "Chico's").
3. Chico's is in the business, *inter alia*, of the retail sale of women's clothing through the United States. It has numerous stores located within

the Southern District of New York, including, but not limited, White Plains, New York.

4. Ms. McLaren is the holder of certain copyright interests as more fully set forth below.

Jurisdiction and Venue

5. This is an action for copyright infringement arising under the Copyright Act of 1976, as amended, 17 U.S.C.A. §§101 et seq.

6. This Court has jurisdiction of the action by virtue of 28 U.S.C.A. §§1331 and 1338.

7. Venue is proper under 28 U.S.C.A. §§1391(b) and 1400(a) because the claims arose within this district and the defendant is found within this district.

Background

8. Ms. McLaren is a designer, illustrator and artist. Her distinctive style has brought major commissions from Saks Fifth Avenue, Bergdorf Goodman, Neiman Marcus, Henri Bendel and Bloomingdales, as well as many other high end retailers and publishers. Her mannequins have been purchased by Saks Fifth Avenue, Neiman Marcus, Bergdorf Goodman, Lily Pulitzer as well as many other upscale retailers. She has written and illustrated two books, and has illustrated dozens of other books.

24. It became apparent to Ms. McLaren that Chico's was not purchasing the mannequins which possessed her designs from Pucci and was producing them or obtaining them from other non-authorized sources.

25. On or about January 31, 2010 counsel for Ms. McLaren wrote to Chico's requesting information of how it came into possession of the mannequins in question.

26. On or about February 9, 2010 counsel for Ms. McLaren received a telephone call and an email from counsel to Chico's advising him that they were investigating the situation.

27. Since February 9, 2010, until the date of this complaint, neither Ms. McLaren nor her counsel has received any further communication from Chico's.

28. Continuing from at least February 28, 2010, Chico's continues to use the mannequins with the designs of Ms. McLaren in its retail stores.

29. Each and every of defendants' acts, as alleged herein, are infringements of Ms. McLaren's copyrights.

30. The defendant has committed all of the aforesaid acts of infringement deliberately and willfully.

31. The defendant has continued to infringe Ms. McLaren's copyrights, and unless permanently enjoined by order of this Court, will continue to infringe Ms. McLaren's copyrights, causing Ms. McLaren irreparable harm.

32. Ms. McLaren has sustained, and will continue to sustain, substantial injuries, loss and damage to her exclusive rights under the copyright laws regarding the original works listed in Exhibit "A" and more particularly Exhibit

“C”, and Ms. McLaren has sustained and will continue to sustain damages from the loss of value of the exclusive rights thereunder by reason of the defendant's conduct.

WHEREFORE, Plaintiff demands judgment as follows:

1. That Defendant be permanently enjoined from directly or indirectly:

(a) duplicating, manufacturing, using, exhibiting or copying any copyrighted original work of Ms. McLaren;

(b) offering to do any of the acts enjoined in subparagraph (a) above; and

(c) in any manner infringing or contributing to or participating in the infringement by others of any of Ms. McLaren's copyrights in original works.

2. That Defendant be required to deliver to Ms. McLaren all unauthorized copies of Ms. McLaren's copyrighted works, in any form as are herein alleged to infringe any of Ms. McLaren's copyrights. At the time of delivery, Defendant must provide Ms. McLaren with a sworn affidavit, stating that all unauthorized copies of Ms. McLaren's copyrighted works, that are in their possession, held for delivery to them or under their control, are being delivered to Ms. McLaren.

3. Defendant be required to pay to Ms. McLaren her actual damages or her statutory damages of up to \$30,000 for each of its copyright infringements with respect to each copyright. If the Court finds that any infringement was committed willfully, Ms. McLaren prays for statutory damages of up to \$150,000 for each copyright for all willful infringements with respect to those works.

4. That Ms. McLaren recover reasonable attorney's fees and costs of the suit incurred herein.

5. That Ms. McLaren have such other relief as this Court deems just and proper.

Dated: White Plains, New York
March 18, 2010

BAKER LESHKO SALINE & BLOSSER, LLP
Attorneys for Plaintiff

By: _____

Mitchell J. Baker

One North Lexington Avenue
White Plains, New York 10601-1712
914.681.9500

Exhibit "A"

[PICTURES OF THE COLLECTION]

1.



Chesley

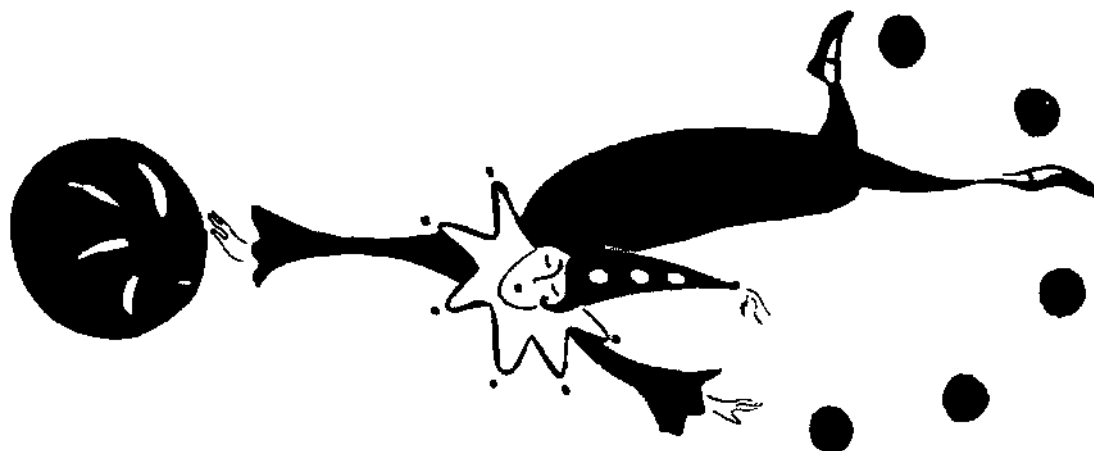
2.



M.



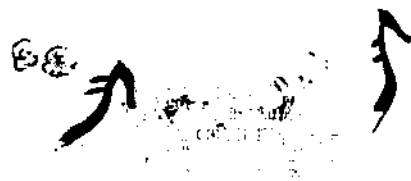
4.



5.

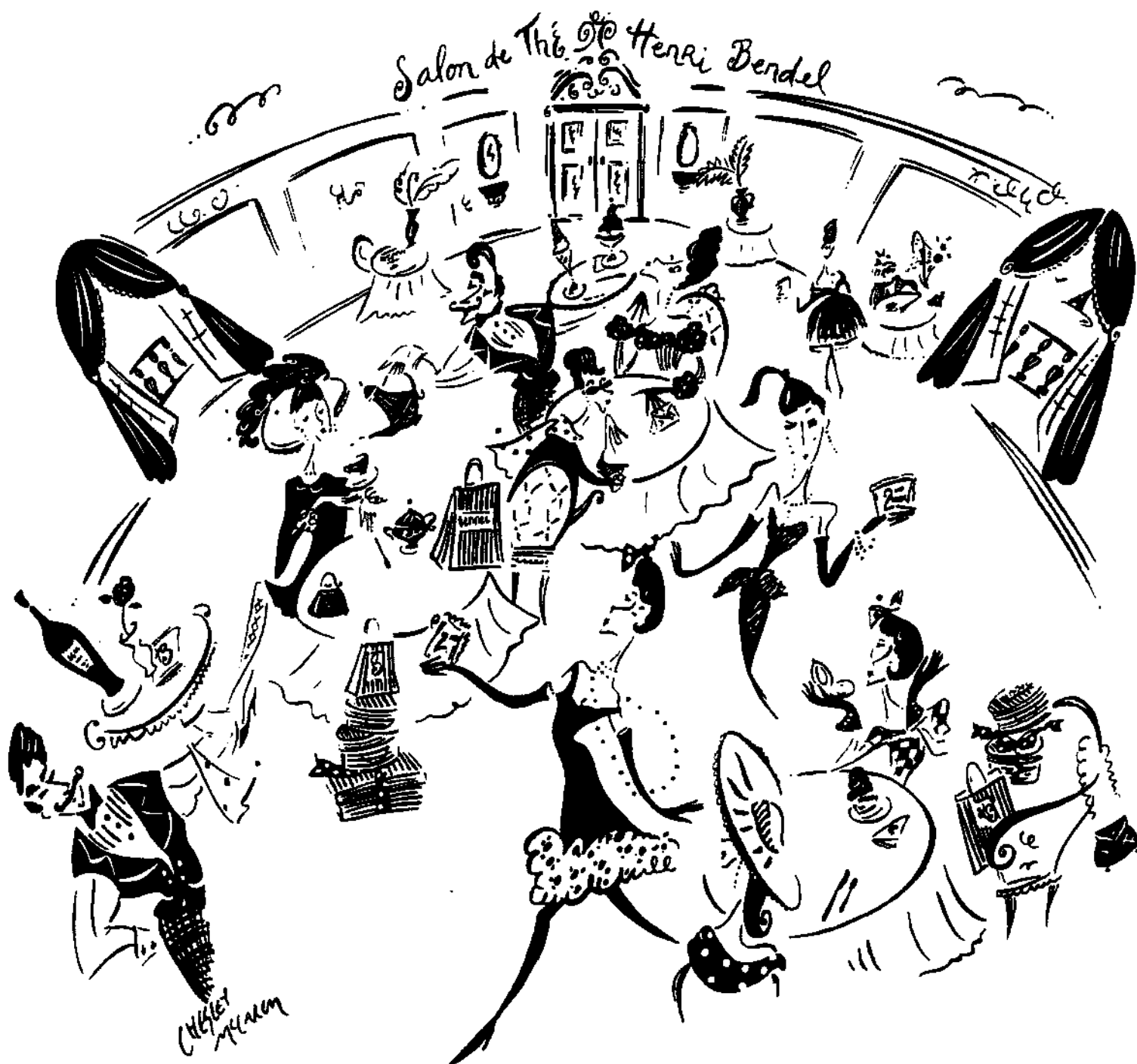


6.



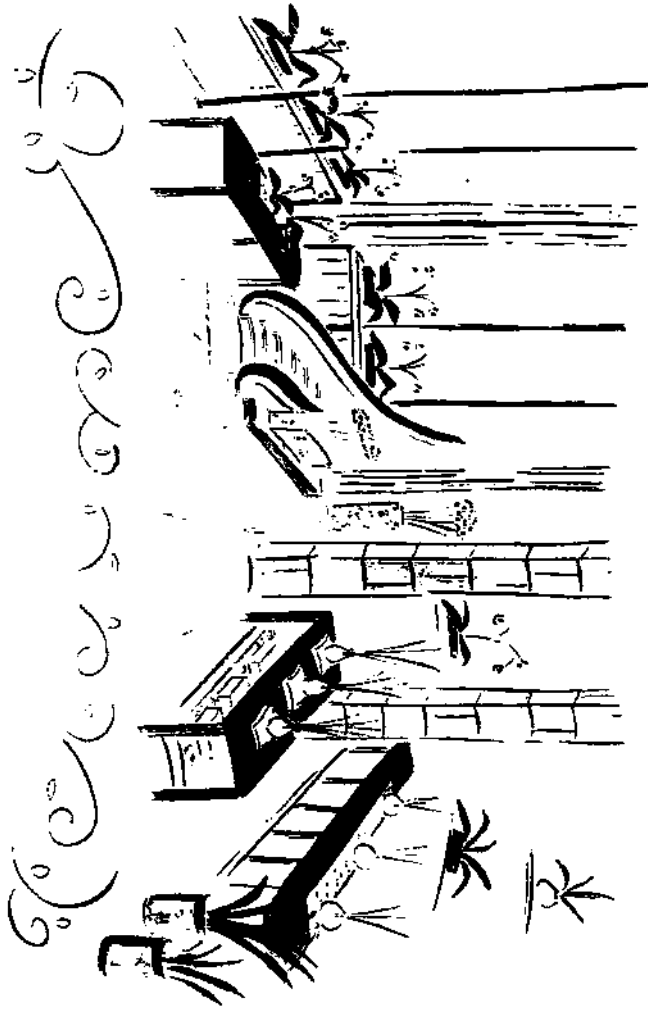
la fleur de Chine

7.



Chesley. H. Bendel.

8.



Chester Bergdorf Goodman





Chesley R. Tucker

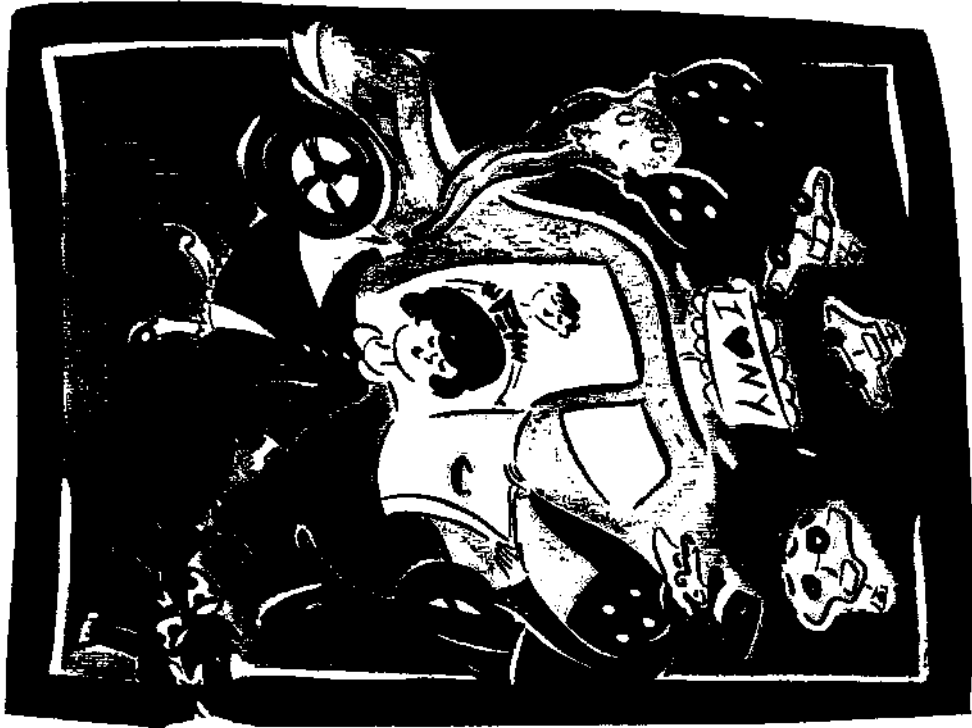
11.



Chesley NY Observer



Chesley Ester Lander



On the Town



School Portrait

Chesley Saks Fifth Avenue Children

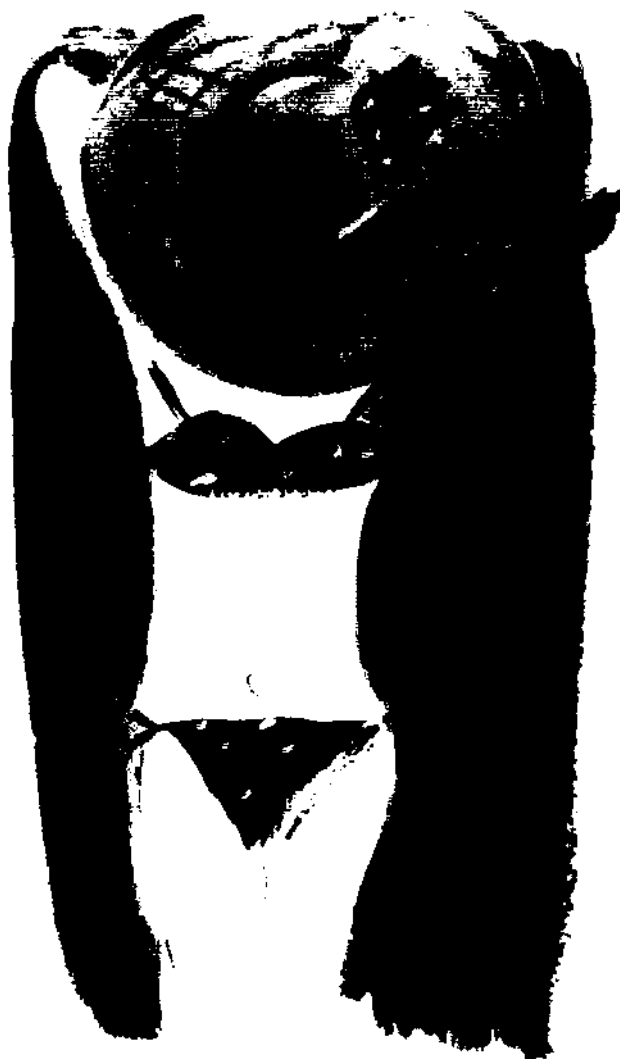


Who cares where you might wear it, how much
you'd have to pay. It's a privilege just to see it,
not common everyday.

'Tis Haute Couture!

Chesley

Personal work



Chesley

Athena Magazine



Beacon Press

Chesley . Beacon Press . Book



Chesley Vogue Magazine



Chester Beacon Press. Book

19





Artisan Press

Thursday. Chanel / Dior



Estee Lauder Packaging

Chesley

22



Chesley. Japan. Poster





Chesley Givenchy Parfum

Exhibit “B”

[COPYRIGHT REGISTRATION]

CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

FORM VA

For a Work of the Visual Arts

VA 1-074-571

DEC 08 2000

OFFICIAL NOTICE: DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK

Chesley: set of 24

Drawings

PREVIOUS OR ALTERNATIVE TITLES

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Page

2

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see 17 U.S.C. 101). For any part of this work that was "made for hire," check "Yes" in the space provided, give the employer's name, and insert the space for dates of birth and death below.

NAME OF AUTHOR

a Chesley McLaren

Was this contribution to the work a "work made for hire"?

☐ Yes ☒ No

Author's Nationality or Domicile
Name of Country
OR
Country of P. United States
Domiciled in P.

DATES OF BIRTH AND DEATH

Year Born Year Died

1954

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ NoPseudonym? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate boxes. See instructions.

☐ 3-Dimensional sculpture☐ Map☐ Technical drawing☒ 2-Dimensional artwork☐ Photograph☐ Text☐ Reproduction of work of art☐ Jewelry design☐ Architectural work

NAME OF AUTHOR

b

Was this contribution to the work a "work made for hire"?

☐ Yes ☒ No

Author's Nationality or Domicile
Name of Country
OR
Country of P. United States
Domiciled in P.

DATES OF BIRTH AND DEATH

Year Born Year Died

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ NoPseudonym? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate boxes. See instructions.

☐ 3-Dimensional sculpture☐ Map☐ Technical drawing☐ 2-Dimensional artwork☐ Photograph☐ Text☐ Reproduction of work of art☐ Jewelry design☐ Architectural work

3

4

See instructions for completing this space.

Year in Which Creation of This Work Was Completed

2000

Date and Place of First Publication of This Work

November 4, 2000 United States

COPYRIGHT CLAIMANT(s) Name and address to which to give notice of claimant in the same as the author given in space 2

Chesley McLaren
125 West 79th Street
New York, New York 10024

Transfer: If the claimant(s) named here in space 4 is (are) a (are not) the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

MORE ON BACK

• Complete all applicable spaces numbers 5-6 on the reverse side of this page.
• See detailed instructions.
• Explain item at line 8.

APPLICATION RECEIVED
DEC 08 2000
ONE DEPOSIT RECEIVED
DEC 08 2000
TWO DEPOSITS RECEIVED
FUNDING RECEIVED

DO NOT WRITE HERE
Page 1 of 1



EXAMINED BY AS FORM VA
CHECKED BY HW H
☐ CORRESPONDENCE
YES

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.
PREVIOUS REGISTRATION This application for this work, or for previous versions of this work, already been made to the Copyright Office?
☒ Yes X If your answer is "Yes," why is another registration being sought? (If both appropriate boxes.)
a. ☐ This is the first published edition of a work previously registered in unpublished form.
b. ☐ This is the first application submitted by the author or copyright owner.
c. ☐ This is a changed version of the work, as shown by space 8 to the application.
If your answer is "Yes," give Previous Registration Number Name of Registration

DERIVATIVE WORK OR COMPILED WORK This application is for a derivative work or a compiled work. Complete only one of the following.
a. Preserving Material Identify any previously published work or works derivative work is based on or incorporates.
b. Material Added to This Work Give a brief, present statement of the material that has been added to this work and in which copyright is claimed.
c. See instructions before completing this space.

DEPOSIT ACCOUNT If the application for is to be changed to a Deposit Account established in the Copyright Office, give name and number of Account.
Name Account Number

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name Address Apt/Box/Room/202
Chesley McLaren
125 West 79th Street, #3F
New York, New York 10024
Area code and telephone number 212 496-1505 Fax number 212 580-9396
E-mail

CERTIFICATION I, the undersigned, hereby certify that I am the
check only one ☒ Author
☐ Owner copyright statement
☐ Owner of exclusive right(s)
☐ Authorized agent of
Name of owner or other appropriate person or owner of exclusive right(s)
of the work identified in this application and that the statements made by me in this application are true to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication to space 3, do not sign and submit it before that date.
Chesley McLaren Date December 4, 2000
Handwritten signature (DO NOT SIGN OVER THIS LINE)
Chesley McLaren

Certificate will be mailed in envelope separate to this address:
Name Chesley McLaren
Number/Street/Box 125 West 79th Street, #3F
City/State/Zip New York, New York 10024
Library of Congress Copyright Office 101 Independence Avenue, SE Washington, D.C. 20540-4001

NOTE: Any person who knowingly makes a false representation of a matter in the application for copyright registration provided for by section 405, or in any other statement filed in connection with the application, shall be fined not more than \$2,500.
U.S. GOVERNMENT PRINTING OFFICE: 1993-430-87571



Exhibit "C"

[PICTURE OF THE FEMALE MANNEQUINS]



Exhibit "D"

[PICTURES OF OFFENDING MANNEQUINS]







